

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



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To: Joan Miles
DPHHS Director

From: Russ Cater *RC*
DPHHS Chief Legal Counsel

Subject: Significant Ongoing Litigation

The DPHHS Office of Legal Affairs is involved in providing legal representation for DPHHS in numerous administrative and court proceedings. There are only a few, however, that I would characterize as having a significant long term impact upon the Department. They are as follows:

Sandra L., ...and Montana Association for Independent Disability Services (MAIDS) v. Joan Miles et al. This class action lawsuit has been pending for several years. It alleges that the reimbursement rates paid to providers serving persons with developmentally disabilities in community services violate state law (MCA 53-2-201, 53-6-602, 53-6-113, and Article II, sections 3 and 4 and Article XII, section 3 of Montana's Constitution) in that those rates are inadequate for the recruitment and retention of direct care staff and that as a consequence consumers are inappropriately served. An adverse ruling in this case, based on the Plaintiff's desired remedies, would have a significant fiscal impact involving millions of dollars. Plaintiff's success would likely foster similar litigation with respect to the other programs of direct care services.

Terry Blanton et al. vs. DPHHS This class action lawsuit challenges the right of the DPHHS Medicaid program to assert a lien on payments made by third parties (such as tortfeasors or insurers) to Medicaid recipients to compensate them for injuries or illness for which the Medicaid Program has made payments to medical providers. Plaintiff seeks relief for Medicaid recipients who have paid liens as far back as 1999 as well as for recipients who currently have unpaid liens. The lawsuit alleges that MCA 53-2-612 violates federal law in light of a recent U.S. Supreme Court decision entitled Arkansas v. Ahlborn. They claim that the Medicaid program is only entitled to settlement monies that are specifically allocated to payments made by the Medicaid program and not to an overall settlement that may include unspecified damages such as pain and suffering, lost wages, etc. If the Department loses, it could be required to repay hundreds of thousands of dollars to Medicaid recipients who paid liens in the past as well as losing future payments.

In the Matter of Rita Hofer et al. v. Montana Department of Public Health and Human Services. This case is filed on behalf of a number of members of the King Hutterite Colony located near Lewistown. It is not a class action but will have state-wide implications. The named parties are seeking medicaid eligibility for themselves and their children. The Department originally denied their application for medicaid after the inclusion of the resources of the entire Colony. The parties claimed that they do not have the legal right to any part of the Colony assets. Some of the issues in this case were decided by the Montana Supreme Court in an opinion dated December 6, 2005. The Court concluded that an "express trust" did exist between the Colony and its members. But, the case was remanded for a determination of what assets could be considered to belong to the individual members for purposes of determining medicaid eligibility. In addition, the Colony members are claiming that all assets of the Colony should be excluded as work related resources.

Please let me know if I can be of further assistance.